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VIA EMAIL

November 27, 2015

Jeff S. Jordan, Esq.  
Assistant General Counsel  
Complaints Examination & Legal Administration  
Federal Election Commission  
999 E Street NW  
Washington, DC 20463

Re: MUR 6971 – Governor Jeb Bush, Jeb 2016, Inc., William Simon in his official capacity as Treasurer of Jeb 2016, Inc., and Fred Cooper

Dear Mr. Jordan:

We represent Governor Jeb Bush, Jeb 2016, Inc. (“Jeb 2016”), William Simon in his official capacity as Treasurer of Jeb 2016, and Fred Cooper (collectively, the “Respondents”) in the above-captioned MUR.

We have reviewed the Complaint filed on October 1, 2015 by the American Democracy Legal Fund (“ADLF”) alleging that “numerous agents of Mr. Bush may have violated the Act by soliciting, receiving, directly [sic], transferring and/or spending funds in connection with a federal election outside of the limitations, prohibitions, and reporting requirements of the Act while acting in their capacity as Mr. Bush’s agents.” Complaint at 1-2.

These allegations have no basis in fact or law. As explained below, the Complaint consists solely of erroneous and speculative allegations that fail to state a claim that a violation has occurred. ADLF proffers no evidence—nor could it—that any of the Respondents solicited funds outside of FECA’s contribution limits, source prohibitions, and reporting requirements, let alone that they did so in the capacity as agents of Governor Bush or Jeb 2016. Put simply, the Respondents did not engage in the impermissible fundraising that the Complaint speculates occurred.

Accordingly, the Commission should find no reason to believe that the Respondents violated the Federal Election Campaign Act of 1971, as amended (“FECA” or the “Act”) or Federal Election Commission (“FEC” or the “Commission”) regulations and promptly dismiss this matter.

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**FACTS**

**I. Governor Jeb Bush and Jeb 2016**

In early June 2015, Governor Jeb Bush became a candidate for President of the United States and designated Jeb 2016 as his principal campaign committee. See Jeb Bush, Statement of Candidacy (dated June 5, 2015), [http://docquery.fec.gov/cgi-bin/fecimg?\\_15031431747+0](http://docquery.fec.gov/cgi-bin/fecimg?_15031431747+0); 2016, Statement of Organization (dated June 5, 2015), [http://docquery.fec.gov/cgi-bin/fecimg?\\_15031431751+0](http://docquery.fec.gov/cgi-bin/fecimg?_15031431751+0). Governor Bush became subject to FECA's soft money restrictions when he became a federal candidate; Jeb 2016 has been subject to FECA's soft money restrictions since its creation.

To encourage participation in its campaign and fundraising events, Jeb 2016 frequently lists individuals who have pledged to contribute or raise a certain amount of contributions as host committee members on the event invitation. See Declaration of Heather Larrison at ¶ 5 (attached as Exhibit A). Jeb 2016's criteria for listing an individual as a host committee member on a fundraising event invitation varies from event to event and depends on the circumstances. *Id.*

Like many other presidential campaigns, Jeb 2016 has retained the services of a number of consultants. These consultants are independent contractors, which, by definition, have the freedom to contract with other clients besides Jeb 2016. Recognizing the possibility that its consultants may have other clients who raise and spend soft money, Jeb 2016 requires that all of its consulting contracts—not just consulting contracts related to fundraising—include provisions related to FECA's soft money restrictions.

Specifically, Jeb 2016's consulting contracts provide that:

While performing services for any other political committees, entities, or individuals, Consultant shall have no authority, actual or apparent, to act on behalf of the Committee and shall not be an agent of the Committee. While performing services for any other political committees, entities, or individuals, Consultant shall not hold itself out or otherwise represent itself as an agent of the Committee. . . .

While acting on behalf of the Committee, Consultant shall not solicit, receive, direct, transfer, spend, or disburse funds, or any other thing of value, that do not comply with the amount limitations, source prohibitions, and reporting requirements of FECA.

Jeb 2016, Template Consulting Services Agreement (redacted copy attached as Exhibit B).

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**II. Fred Cooper**

Fred Cooper has contributed to Jeb 2016, but Jeb 2016 has not provided Mr. Cooper with an agent letter authorizing him to raise funds on the committee's behalf. See Larrison Decl. at ¶¶ 3-4; Jeb 2016, 2015 October Quarterly Report, at 307 (filed July 15, 2015). Jeb 2016 held a fundraising event in Atlanta, Georgia on June 29, 2015. Larrison Decl. at ¶ 4. Jeb 2016 listed Mr. Cooper as a host committee member on the event invitation because he pledged to contribute \$2,700 in connection with the event. *Id.*

**III. Emil Henry**

Emil Henry is a volunteer fundraiser for Jeb 2016 and has been authorized by Jeb 2016 to raise funds on the committee's behalf. Larrison Decl. at ¶ 6. Jeb 2016 held a fundraising event in New York City, New York on June 24, 2015. *Id.* at ¶ 7. Mr. Henry committed to raise at least \$27,000 for Jeb 2016 in connection with this event and as part of a Jeb 2016 volunteer fundraising challenge. *Id.*

We understand that Mr. Henry made an in-kind contribution to Right to Rise USA in February 2015—not on June 29, 2015 as asserted in the Complaint. Mr. Henry is represented by separate counsel, and we understand that his counsel will be submitting a separate response to the Commission rebutting this factual inaccuracy.

**IV. Kris Money, Trey McCarley, and Debbie Aleksander**

Kris Money, Trey McCarley, and Debbie Aleksander (collectively, the "Florida Fundraising Consultants") provided fundraising consulting services to Jeb 2016 as subcontractors of LKJ, LLC until their contracts were terminated in August 2015. *Id.* ¶ 8. LKJ, LLC is Jeb 2016's primary fundraising consultant and retains fundraising consultant subcontractors as necessary to meet Jeb 2016's fundraising consulting needs. *Id.* at ¶ 9.

Similar to Jeb 2016's contracts with its other consultants, Jeb 2016's contract with LKJ, LLC provides that:

CONSULTANT shall comply with all applicable laws in the performance of the Services under this Agreement. CONSULTANT represents that it has adequate knowledge of FECA and FEC Regulations to perform the Services in compliance with such laws. CONSULTANT agrees to consult with legal counsel in the event CONSULTANT has questions regarding the application of any provision of law to the CONSULTANT's Services. . . .

While acting on behalf of the CAMPAIGN, which is subject to FECA's soft money restrictions at 52 U.S.C. § 30125(e)(1),

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CONSULTANT shall not solicit, receive, direct, transfer, spend, or disburse funds, or any other thing of value, that do not comply with the amount limitations, source prohibitions, and reporting requirements of FECA. . . .

In providing services to CONSULTANT's other clients, CONSULTANT shall have no authority, actual or apparent, to act on behalf of the CAMPAIGN and shall not be an agent of the CAMPAIGN. In providing services to its other clients, CONSULTANT shall not hold itself out or otherwise represent itself as an agent of the CAMPAIGN. . . .

Consulting Contract between Jeb 2016 and LKJ, LLC, at 4 (redacted copy attached as Exhibit C). These terms were also included in the contracts between LKJ, LLC and its subcontractors: Larrison Decl. at ¶ 9.

In addition to setting forth specific compliance obligations in its fundraising contracts, Jeb 2016 also held legal compliance training for all fundraising consultants providing services to the campaign. *Id.* at ¶ 10. During this training, Jeb 2016 reiterated to the fundraising consultants that they were not authorized to solicit soft money contributions on behalf of Governor Bush or Jeb 2016. *Id.* Jeb 2016 also explained that the fundraising consultants were prohibited from using Jeb 2016 resources in connection with providing services to their other clients, referencing their role with Jeb 2016 in connection with providing services to their other clients, and soliciting contributions at the same time for both Jeb 2016 and any of their other clients. *Id.*

**V. Right to Rise USA**

Right to Rise USA is an independent expenditure-only committee registered with the Commission. Right to Rise USA, Statement of Organization (amended June 12, 2015), <http://docquery.fec.gov/pdf/367/15951468367/15951468367.pdf>. According to its website, "Right to Rise USA is the leading independent political action committee strongly supporting Jeb Bush for President." Right to Rise USA, About Us (last visited Nov. 20, 2015), <https://righttorisesuperpac.org/about/rtrusa?lang=en>.

**THE LAW**

**Federal Candidate Soft Money Fundraising Restrictions**

Under FECA, "[a] candidate . . . [or] agent of a candidate . . . shall not solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act." 52 U.S.C. § 30125(e)(1)(A).

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The Commission's regulations clarify that this prohibition, colloquially known as the "soft money ban," applies, in relevant part, to "Federal candidates" and "[a]gents *acting on behalf of a Federal candidate*." 11 C.F.R. § 300.60 (emphasis added).

"[T]o solicit" means "to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value." *Id.* § 300.2(m). "A solicitation is an oral or written communication that, construed as reasonably understood in the context in which it is made, contains a clear message asking, requesting, or recommending that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value." *Id.* However, "[a] solicitation does not include mere statements of political support." *Id.*

**A. Agents of federal candidates are only subject to the soft money ban while they are "acting on behalf of" the federal candidates.**

For purposes of the soft money ban, an "agent" is "any person who has actual authority, either express or implied, to . . . solicit, receive, direct, transfer, or spend funds in connection with any election" on behalf of a federal candidate. *Id.* § 300.2(b)(3). This definition "does not apply to individuals who do not have any actual authority to act on their [principal's] behalf, but only 'apparent authority' to do so." *Explanation and Justification for Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, 67 Fed. Reg. 49064, 49082 (July 20, 2002) (hereinafter "2002 Soft Money E&J").

The Commission has "emphasize[d] that . . . a principal cannot be held liable for the actions of an agent unless (1) the agent has actual authority, (2) the agent is acting on behalf of his or her principal, and (3) the agent is engaged in one of the specific activities described [above]." *Id.* at 49083. "Specifically, it is not enough that there is some relationship or contact between the principal and agent; rather, *the agent must be acting on behalf of the principal* to create potential liability for the principal." *Id.* (emphasis added).

Furthermore, "a request that a person raise [soft money] does not in and of itself create an agency relationship." FEC AO 2003-03 (Cantor), at 9 (Apr. 29, 2003) (superseded on other grounds).

**B. The Commission's definition of "agent" only applies to individuals who have "actual authority" to act on behalf of their principals, and not merely "apparent authority" to do so.**

As explained above, the Commission's definition of "agent" "does not apply to individuals who do not have any actual authority to act on their [principal's] behalf, but only 'apparent authority' to do so." 2002 Soft Money E&J at 49082. "[A]ctual authority is created by manifestations of consent (express or implied) made by the principal *to the agent*." *Explanation and Justification for Definition of "Agent" for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures*, 71 Fed. Reg. 4975, 4976 (Jan. 31, 2006) (hereinafter "2006 Agency E&J").



Thus, the Commission's definition of "agent" preserve[s] the ability of individuals to solicit funds on behalf of multiple entities." *Id.* at 4979. For example, "it is clear that individuals, such as State party chairmen and chairwomen, who also serve as members of their national party committees, can, consistent with BCRA, wear multiple hats, and can raise non-Federal funds for their State party organizations without violating the prohibition against non-Federal fundraising by national parties." 2002 Soft Money E&J at 49083. In addition, "a fundraiser, whether professional or volunteer, may rais[e] funds for more than one candidate or committee." FEC AO 2005-02 (Corzine), at 10 (Apr. 22, 2005).

Furthermore, in several advisory opinions, "the Commission has concluded that individuals who are agents of federal candidates may solicit funds on behalf of other organizations if the individuals act in their own capacities 'exclusively on behalf of' the other organizations when fundraising for them, 'not on the authority of' the candidates, and raise funds on behalf of the candidates and the other organizations 'at difference times.'" FEC AO 2015-09 (Senate Majority PAC), at 7 (Nov. 13, 2015) (quoting FEC AO 2003-10 (Reid), at 5 (June 16, 2003); FEC AO 2007-05 (Iverson), at 5 (May 4, 2007)).

The Commission recently explained that a federal candidate's agents would not be acting on behalf of the federal candidate when soliciting soft money contributions for an independent expenditure-only political committee if the individuals:

- Identify themselves as raising funds only for the independent expenditure-only political committee;
- Do not use their campaign titles or campaign resources (such as letterhead and email);
- Inform potential contributors that they are making the solicitation on their own and not at the direction of the federal candidate or their agents; and
- Do not solicit contributions for the federal candidate and the independent expenditure-only political committee at the same time.

*Id.* at 7-8.

## DISCUSSION

### **I. The Complaint fails to meet the "reason to believe" standard and should be dismissed at the threshold.**

ADLF alleges that "numerous agents of Mr. Bush may have violated the Act by soliciting, receiving, directly [sic], transferring and/or spending funds in connection with a federal election outside of the limitations, prohibitions, and reporting requirements of the Act while acting in their capacity as Mr. Bush's agents." Complaint at 1-2. Yet, as explained below, ADLF's allegations are purely speculative and the Complaint fails to set forth specific facts which, if



proven true, could constitute a violation of the Commission's soft money ban by the Respondents.

Commission regulations require that a complaint "contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction." 11 C.F.R. § 111.4(d)(3). A "reason to believe" finding is appropriate "only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA." Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas in MUR 4960 (Hillary Rodham Clinton for US Senate Exploratory Committee), at 1 (Dec. 21, 2000). "Unwarranted legal conclusions from asserted facts . . . or mere speculation . . . will not be accepted as true." *Id.* at 2. Moreover, "[p]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find a reason to believe finding that a violation of the FECA has occurred." Statement of Reasons of Vice Chair Hunter and Commissioners McGahn and Peterson in MUR 6296 (Buck), at 5 (quoting First General Counsel's Report in MUR 5467 (Moore), at 5).

As the Commission is aware, the Complaint is the latest in a series of unsubstantiated complaints (and amendments and supplements) filed by ADLF against Governor Bush and Jeb 2016. This track record demonstrates that they are abusing the enforcement process to garner publicity and for nuisance value to force Governor Bush and Jeb 2016 to spend their precious time and resources responding to specious claims. In this Complaint, ADLF has reached a new low by personally naming a Jeb 2016 donor and volunteer fundraiser in an effort to chill participation.

Although the Commission's historic practice has been to find no "reason to believe" a violation has occurred based on the merits, ADLF's now clear abuse of the enforcement process necessitates that Commission consider dismissing this and other ADLF complaints at the threshold for failing to allege any facts sufficient to constitute a violation of the Act. As detailed below, the Complaint does not provide *any* evidence that Mr. Cooper, Mr. Henry, or the Florida Fundraising Consultants solicited any soft money contributions for Right to Rise USA, let alone that they had actual authority to do so on behalf of Jeb 2016. Because it fails to meet the "reason to believe" standard, the Commission should promptly dismiss the Complaint on this basis alone and put an end to ADLF's abusive practices.

**A. The Complaint speculates, without any supporting evidence, that Mr. Cooper solicited soft money contributions for Right to Rise USA.**

ADLF's claim that Mr. Cooper solicited soft money contributions for Right to Rise USA is based on a series of speculative assumptions and illogical conclusions.

*First*, ADLF speculates that because Mr. Cooper made an in-kind contribution to Right to Rise USA for "catering," the in-kind contribution *must* have been made in connection with a Right to Rise USA fundraising event. Although Right to Rise USA's FEC report discloses that Mr. Cooper made an in-kind contribution of "catering" to Right to Rise USA, the Complaint presents no evidence that the in-kind contribution was made in connection with a Right to Rise USA



fundraising event. Right to Rise USA's FEC report does not list "fundraising event catering" as the purpose of Mr. Cooper's in-kind contribution. It simply says "catering."

*Second*, ADLF further speculates that because Mr. Cooper's in-kind contribution to Right to Rise USA *must* have been made in connection with a Right to Rise USA fundraising event, Mr. Cooper *must* have solicited soft money for Right to Rise USA. Nothing in FECA, FEC regulations, or Commission precedent suggests that making an in-kind contribution, or even making an in-kind contribution in connection with a fundraising event, amounts to a solicitation. Moreover, ADLF presents no evidence that Mr. Cooper did anything more than make an in-kind contribution to Right to Rise USA.

*Third*, ADLF speculates that because Mr. Cooper was listed as a host committee member for a Jeb 2016 fundraising event, he *must* have raised money for Jeb 2016 in connection with the fundraising event. The fact that Mr. Cooper was listed as a host committee member for a Jeb 2016 fundraising event does not mean that he raised money for Jeb 2016 in connection with the fundraising event. Jeb 2016, like many other political committees, frequently lists individuals who have contributed or raised a certain amount as host committee members on event invitations to encourage participation. Larrison Decl. at ¶ 5. Jeb 2016's criteria for listing individuals as host committee members varies from event to event and depend on the circumstances. *Id.* Mr. Cooper was listed as a host committee member on a Jeb 2016 fundraising event invitation because he pledged to contribute \$2,700 in connection with the event. *Id.* at ¶ 4.

On this basis alone, the Commission should find that there is no reason to believe that Mr. Cooper solicited soft money contributions for Right to Rise USA while acting on behalf of Jeb 2016 and in violation of the soft money ban.

**B. The Complaint speculates, without any supporting evidence, that Mr. Cooper was an "agent" of Jeb 2016.**

Even if Mr. Cooper had solicited soft money contributions for Right to Rise USA, these solicitations would have been permissible because Mr. Cooper was not an "agent" of Jeb 2016 and thus was not subject to the soft money ban. Unsurprisingly, ADLF's claim that Mr. Cooper was an "agent" of Jeb 2016 is based on nothing more than speculative assumptions and illogical conclusions.

*First*, ADLF speculates that because Mr. Cooper *must* have raised money for Jeb 2016 in connection with the fundraising event, he *must* have been an "agent" of Jeb 2016.

*Second*, ADLF speculates that because Mr. Cooper *must* have been an agent of Jeb 2016 as a result of the fundraising event, he *must* have been acting on behalf of Jeb 2016 when he made an in-kind contribution to Right to Rise USA on the same day. Such speculation, however, is based on an apparent authority theory of agency—which the Commission has rejected. As discussed above and below, the Commission's definition of "agent" "does not apply to individuals who do not have any actual authority to act on [the principal's] behalf, but only apparent authority to do



so.” 2002 Soft Money E&J at 49082.

ADLF is effectively basing its allegations against Mr. Cooper on the appearance of his conduct to third parties. Mr. Cooper is a donor to Jeb 2016, but he did not have actual authority to act on behalf of Jeb 2016 and has not served as an “agent” of Jeb 2016. Again, ADLF fails to allege facts demonstrating that Mr. Cooper had actual authority to act on behalf of Jeb 2016 such that the soft money ban would apply to him.

**C. ADLF speculates, but presents no evidence, that the Florida Fundraising Consultants solicited soft money contributions for Right to Rise USA.**

ADLF presents no evidence to support its claim that the Florida Fundraising Consultants did, in fact, solicit soft money contributions for Right to Rise USA. Complaint at 5. The news article cited in the Complaint simply states that the Florida Fundraising Consultants were “still working” for Right to Rise USA. Alex Isenstadt and Marc Caputo, *Top Jeb Fundraisers Leave Campaign Amid Troubling Signs*, Politico (Aug. 29, 2015), <http://www.politico.com/story/2015/08/jeb-bush-president-2016-fundraisers-problems-213156>.

Although fundraising consultants typically solicit funds for their clients, there are many other types of fundraising consulting services that do not involve soliciting funds. “Working” for a soft money organization does not necessarily mean “soliciting funds” for a soft money organization. ADLF is unable to present any concrete evidence that the Florida Fundraising Consultants solicited soft money contributions for Right to Rise USA. This allegation is nothing more than speculation based on a few words in a news article.

**II. Even if the Commission does not dismiss the Complaint based on its lack of factual support, the Commission should dismiss the Complaint based on its merits.**

**A. Mr. Cooper did not solicit soft money contributions for Right to Rise USA on behalf of Jeb 2016.**

**1. Mr. Cooper’s in-kind contribution of “catering” to Right to Rise USA does not amount to a soft money “solicitation” for Right to Rise USA.**

As a matter of law, Mr. Cooper’s in-kind contribution does not amount to a solicitation. The Commission’s regulations state that “[a] solicitation is *an oral or written communication* that . . . contains a clear message asking, requesting, or recommending that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value.” 11 C.F.R. § 300.2(m) (emphasis added). An in-kind contribution of catering is not an oral or written communication.

**2. Mr. Cooper was not an “agent” of Jeb 2016.**

Even if Mr. Cooper had solicited soft money contributions for Right to Rise USA, these solicitations would not have been made on behalf of Jeb 2016 because Mr. Cooper was not an



"agent" of Jeb 2016. Mr. Cooper is a donor to Jeb 2016, but Jeb 2016 has not authorized Mr. Cooper to raise funds on its behalf. *Id.* at ¶¶ 3-4. Jeb 2016 listed Mr. Cooper as a host committee member on the invitation for its June 29, 2015 fundraising event in Atlanta, Georgia because Mr. Cooper had pledged to contribute \$2,700 in connection with the event. *Id.* at ¶ 4. Given that Mr. Cooper did not have actual authority from Jeb 2016 to raise funds on behalf of the committee, he was not an "agent" of Jeb 2016 and could not have solicited any soft money contributions on behalf of Jeb 2016.

**B. Mr. Henry did not solicit soft money contributions for Right to Rise USA on behalf of Jeb 2016.**

As with Mr. Cooper, ADLF alleges that Mr. Henry and Jeb 2016 violated the soft money ban because Mr. Henry purportedly solicited soft money contributions for Right to Rise USA in his capacity as an "agent" of Jeb 2016. Specifically, ADLF alleges that Mr. Henry must have solicited soft money contributions for Right to Rise USA in his capacity as an "agent" of Jeb 2016 because Right to Rise USA's FEC report indicates that Mr. Henry made an in-kind contribution of "catering" to Right to Rise USA on June 29, 2015—"just days after he served as the co-chair of a Jeb 2016, Inc. reception on June 24, 2015." Complaint at 3, 5.

Jeb 2016 does not dispute that Mr. Henry is an "agent" of Jeb 2016. Mr. Henry serves as a volunteer fundraiser for the committee and Jeb 2016 has given him actual authority to fundraise on its behalf. Larrison Decl. at ¶ 6. However, we understand that Mr. Henry did not make an in-kind contribution of "catering" to Right to Rise USA on June 29, 2015 and, in fact, made this in-kind contribution in February 2015. (We further understand that Mr. Henry's counsel will explain this factual inaccuracy in a separate response to the Commission.) Thus, Mr. Henry made the in-kind contribution to Right to Rise USA nearly four months before Mr. Henry became an "agent" of Jeb 2016.

Even under ADLF's misguided view of the law, Mr. Henry's activities do not amount to a violation of the soft money ban. If, as ADLF asserts, making an in-kind contribution of "catering" to a soft money organization is a "solicitation" for that soft money organization, then Mr. Henry could not possibly have done so in his capacity as an agent of Jeb 2016 because Jeb 2016 did not exist at the time the in-kind contribution was made.

**C. The Florida Fundraising Consultants did not solicit soft money contributions for Right to Rise USA on behalf of Jeb 2016.**

**1. Jeb 2016 did not give the Florida Fundraising Consultants actual authority to solicit soft money contributions.**

Jeb 2016 does not dispute that the Florida Fundraising Consultants were "agents" of the committee. An individual is an "agent" of a federal candidate if he or she "has actual authority, either express or implied, to . . . solicit, receive, direct, transfer, or spend funds in connection with any election" on behalf of the federal candidate. 11 C.F.R. § 300.2(b)(3). Because the



Florida Fundraising Consultants had actual authority to solicit contributions for Jeb 2016 pursuant to their contracts, they were “agents” of Jeb 2016.

However, the Florida Fundraising Consultants’ work on behalf of their other clients was undertaken on their own and not under any authority—express or implied—by Jeb 2016. Jeb 2016 made it expressly clear to the Florida Fundraising Consultants that they were only authorized to solicit contributions for Jeb 2016 that complied with FECA’s contribution limits, source prohibitions, and reporting requirements and that any services they provided to their other clients were outside of the scope of their authority to act on behalf of Jeb 2016. Specifically:

- Jeb 2016’s contracts with the Florida Fundraising Consultants required that “[w]hile acting on behalf of [Jeb 2016],” the Florida Fundraising Consultants “shall not solicit, receive, direct, transfer, spend, or disburse funds, or any other thing of value, that do not comply with the amount limitations, source prohibitions, and reporting requirements of FECA. . . .” Consulting Contract between Jeb 2016 and LKJ, LLC, at 4.
- Jeb 2016’s contracts with the Florida Fundraising Consultants further required that “[i]n providing services to [the Florida Fundraising Consultant]’s other clients, [the Florida Fundraising Consultants] shall have no authority, actual or apparent, to act on behalf of [Jeb 2016] and shall not be an agent of [Jeb 2016].” *Id.*
- Moreover, Jeb 2016’s contracts with the Florida Fundraising Consultants required that “[i]n providing services to its other clients, [the Florida Fundraising Consultants] shall not hold [themselves] out or otherwise represent [themselves] as an agent of [Jeb 2016].” *Id.*
- In addition, Jeb 2016 reiterated during legal compliance training for fundraising consultants that they were not authorized to solicit soft money contributions on behalf of Governor Bush or Jeb 2016. Larrison Decl. at ¶ 10.
- During the legal compliance training, Jeb 2016 also explained to the fundraising consultants that they were prohibited from using Jeb 2016 resources in connection with providing services to their other clients, referencing their role with Jeb 2016 in providing services to their other clients, and soliciting contributions at the same time for both Jeb 2016 and their other clients. *Id.*

In support of its claim that the Florida Fundraising Consultants were acting on behalf of Jeb 2016, ADLF cites the Commission’s *Explanation and Justification for the Definition of Agent* and claims “the Commission has stated that even if an agent has been explicitly instructed not to raise soft money on behalf of a candidate, his or her solicitation of soft money is still imputed to the candidate.” Complaint at 4.

However, the Commission made no such statement. In the relevant portion of the *Explanation and Justification for the Definition of Agent*, the Commission explained that it was asked by a



commenter if an individual “named as a fundraising chairman” and, therefore, had the “apparent authority” of the candidate, could avoid being the candidate’s agent for non-federal fundraising purposes if “the candidate privately instructed the agent to avoid raising non-Federal funds.” 2006 E&J at 4978. However, this last portion of the question quickly became irrelevant to the Commission’s analysis and response. The Commission immediately focused on, and corrected, the initial premise of the commenter’s question when the Commission explained that “[c]ontrary to the commenter’s assertion, the fundraising chairman in this scenario could be an agent for the purpose of soliciting funds” because fundraising is “within the fundraising chair’s scope of actual authority.” *Id.* The question would then be whether the agent’s principal authorized the agent to engage in the non-federal fundraising on behalf of the principal. Because, as previously explained by the Commission, “a request that a person raise [soft money] does not in and of itself create an agency relationship.” FEC AO 2003-03 (Cantor), at 9.

Thus, the key issue is not whether an individual is an agent of of a federal candidate, but whether an individual is an agent of a federal candidate *and* acting on behalf of the federal candidate. The Commission has repeatedly emphasized that “for the candidate to be liable in this scenario under existing Commission regulations prohibiting soft money solicitations, the [fundraiser] must be ‘acting on behalf’ of the candidate when he or she makes the soft money solicitation.” *Id.* at 4978 n.6 (citing 11 C.F.R. § 300.60(c) (“Agents *acting on behalf* of a Federal candidate.”)). “[A] principal can only be held liable for the actions of an agent when the agent is acting on behalf of the principal, and not when the agent is acting on behalf of other organizations or individuals.” *Id.* (quoting 2002 Soft Money E&J at 49083).

As discussed above, the Commission recently issued an advisory opinion providing guidance on what it means to be “acting on behalf of” a federal candidate. *See* FEC AO 2015-09 (Senate Majority PAC), at 7-8: As the terms of Jeb 2016’s fundraising consultant contracts and the rules discussed during its fundraising consultant training demonstrate, Jeb 2016 took steps above and beyond those required in this advisory opinion to ensure that its fundraising consultants performed services for their other clients in their capacities as professional fundraisers and not on behalf of Jeb 2016.

The facts set forth above clearly demonstrate that even if the Florida Fundraising Consultants solicited soft money contributions for Right to Rise USA, in doing so they were not “acting on behalf of” Jeb 2016.

**2. The Commission has repeatedly rejected extending the definition of “agent” to individuals with “apparent authority.”**

ADLF asserts that “when an agent of a presidential candidate solicits soft money contributions for a single-candidate Super PAC supporting the presidential candidate, the individual is *inherently* raising soft money in his or her capacity as the candidate’s agent in violation of federal law.” Complaint at 4 (emphasis added). In other words, because the Florida Fundraising Consultants “simultaneously served as fundraising consultants for Jeb 2016, Inc. and Right to Rise [USA],” it appears to third parties such as ADLF that the Florida Fundraising Consultants

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# Exhibit A

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**DECLARATION OF HEATHER LARRISON**

I, Heather Larrison, give this declaration based on personal knowledge.

1. My name is Heather Larrison. I am the Finance Director of Jeb 2016, Inc. ("Jeb 2016). I have served in this position since June 2015.

2. As the Finance Director, I oversee Jeb 2016's fundraising activities. I have personal knowledge of who has served as a volunteer fundraiser for Jeb 2016 and who Jeb 2016 has authorized to raise funds on its behalf. I also serve as Jeb 2016's primary point of contact with its fundraising consultants.

3. Jeb 2016 has not provided Fred Cooper with an agent letter authorizing him to solicit funds on the committee's behalf.

4. Jeb 2016 held a fundraising event in Atlanta, Georgia on June 29, 2015. Jeb 2016 listed Mr. Cooper as a host committee member on the invitation for this fundraising event. I recall that Jeb 2016 listed Mr. Cooper as a host committee member on the invitation for this fundraising event because he had pledged to contribute \$2,700 in connection with this fundraising event.

5. Jeb 2016 frequently lists individuals who have pledged to contribute or raise a certain amount of contributions in connection with a particular fundraising event as host committee members on the invitation to encourage participation. Jeb 2016's criteria for listing an individual as a host committee member on a fundraising event invitation varies from event to event and depends on the circumstances.

6. Emil Henry has served as a volunteer fundraiser for Jeb 2016. As a volunteer fundraiser, Jeb 2016 has provided Mr. Henry with an agent letter authorizing him to solicit funds on the committee's behalf.

7. Jeb 2016 held a fundraising event in New York City, New York on June 24, 2015. Jeb 2016 listed Mr. Henry as a host committee member on the invitation for this fundraising event. I recall that Jeb 2016 listed Mr. Henry as a host committee member on the invitation for this event because he had pledged to raise at least \$27,000 for Jeb 2016 in connection with this fundraising event and a Jeb 2016 volunteer fundraising challenge.

8. Kris Money, Trey McCarley, and Debbie Aleksander (collectively, the "Florida Fundraising Consultants") provided fundraising consulting services to Jeb 2016 as subcontractors of LKJ, LLC until their contracts were terminated in August 2015.

9. LKJ, LLC is Jeb 2016's primary fundraising consultant and retains fundraising consultant subcontractors as necessary to meet Jeb 2016's fundraising consulting needs. The compliance responsibilities set forth in Article VIII, Sections A, C, and D of Jeb 2016's contract with LKJ, LLC were included in the contracts between LKJ, LLC and the Florida Fundraising Consultants.

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10. Jeb 2016 held a legal compliance training for all fundraising consultants providing services to the campaign. During this training, Jeb 2016 reiterated to the fundraising consultants that they were not authorized to solicit soft money contributions on behalf of Governor Bush or Jeb 2016. Jeb 2016 also explained that the fundraising consultants were prohibited from using Jeb 2016 resources in connection with providing services to their other clients, referencing their role with Jeb 2016 in connection with providing services to their other clients, and soliciting contributions at the same time for both Jeb 2016 and any of their other clients.

\* \* \*

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 17 day of November, 2015.

  
\_\_\_\_\_  
HEATHER LARRISON

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# Exhibit B

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7. Other Consulting Services. While performing services for any other political committees, entities, or individuals, Consultant shall have no authority, actual or apparent, to act on behalf of the Committee and shall not be an agent of the Committee. While performing services for any other political committees, entities, or individuals, Consultant shall not hold itself out or otherwise represent itself as an agent of the Committee.

10. Compliance with Law. Consultant shall comply with all applicable laws in the performance of the Services.

While acting on behalf of the Committee, Consultant shall not solicit, receive, direct, transfer, spend, or disburse funds, or any other thing of value, that do not comply with the amount limitations, source prohibitions, and reporting requirements of FECA. Consultant represents that it has adequate knowledge of FECA and FEC regulations to perform the Services in compliance with FECA and FEC regulations, including, but not limited to, 11 C.F.R. §§ 109.20 through 109.37.

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SIGNATURE PAGE TO CONSULTING SERVICES AGREEMENT

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

COMMITTEE:

JEB 2016, INC.

By: \_\_\_\_\_  
[NAME]  
[TITLE]

Address for notices:

9250 W. Flagler Street, Suite 250  
Miami, FL 33174  
Attention: [TITLE]

CONSULTANT:

[CONSULTANT NAME]

By: \_\_\_\_\_  
[NAME]  
[TITLE]

Address for notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**ARTICLE VIII - COMPLIANCE RESPONSIBILITIES**

A. Compliance with Laws. CONSULTANT shall comply with all applicable laws in the performance of the Services under this Agreement. CONSULTANT represents that it has adequate knowledge of FECA and FEC Regulations to perform the Services in compliance with such laws. CONSULTANT agrees to consult with legal counsel in the event CONSULTANT has questions regarding the application of any provision of law to the CONSULTANT's Services.

C. Soft Money Restrictions. While acting on behalf of the CAMPAIGN, which is subject to FECA's soft money restrictions at 52 U.S.C. §30125(e)(1), CONSULTANT shall not solicit, receive, direct, transfer, spend, or disburse funds, or any other thing of value, that do not comply with the amount limitations, source prohibitions, and reporting requirements of FECA.

D. Other Consulting Services. In providing services to CONSULTANT's other clients, CONSULTANT shall have no authority, actual or apparent, to act on behalf of the CAMPAIGN and shall not be an agent of the CAMPAIGN. In providing services to its other clients, CONSULTANT shall not hold itself out or otherwise represent itself as an agent of the CAMPAIGN.